IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 152 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

JJJJ

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue the following question has been referred to this court for its opinion under the provisions of sec.256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

"Whether the Tribunal has been right in confirming the decision of CIT(A) of the effect that the assessment in respect of the income received by the assessee from the firm of M/s. Jayshankar S. Upadhyaya in which Shri S.T. Joshi was representing is required to be made on substantive basis in the hands of the assessee and not on protective basis, and that income did not belong to Shri S.T. Joshi in his individual capacity?"

2. We have heard learned advocate Shri B.B. Naik appearing for the revenue. Though served nobody has appeared for the respondent-assessee.

3. It has been submitted by learned advocate Shri Naik appearing for the revenue that a similar question has been decided by this court in I.T.R. No. 412 of 1983 on 4.5.1998.

4. It has been held in the said case that when a trustee, who is representing the trust in a partnership firm receives share of income of the trust, he receives the income in his capacity as a trustee and not in his capacity as an individual and therefore the trustee cannot be taxed in his individual capacity for the amount of income earned by him in his capacity as a trustee.

5. The question which has been raised in the present reference is also similar. We are in respectful agreement with the ratio of the judgment delivered by this court in I.T.R. No.412 of 1983 (CIT v. Bhikhabhai Vajeram Family Trust). We, therefore, answer this question in favour of the assessee and against the revenue.

The reference thus stands disposed of with no order as to costs.

(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

(hn)